



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice
QC – 10 – 6

July 26, 2010

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Sears, Roebuck, and Company, and Kmart Corporation Settlement

Attached is a final judgment and permanent injunction pursuant to stipulation issued by the District Attorney's Office of Marin County, in conjunction with the District Attorney's Offices of Alameda, Los Angeles, Santa Clara, Santa Cruz, and Sonoma Counties filed against Sears, Roebuck, and Company and Kmart Corporation on July 19, 2010 for improper computation of value, pursuant to California Business and Professions Codes 12024.2.

We value greatly the fine work done on behalf of the people, by the prosecution team representing the various District Attorney's Offices, as well as the State and county investigators that pursued these violations. Sears, Roebuck, and Company and Kmart Corporation were assessed civil penalties of \$900,000.00, investigative cost recovery of \$100,520.16, and cy pres relief of \$100,000.00 for a total of \$1,100,520.16.

Marin County should be sure to report these penalties in the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

Sincerely,

Edmund E. Williams
Director

Cc PQV Special Investigators



FILED

JUL 19 2010

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,) NO. CIV 100 3 725
Plaintiff,) FINAL JUDGMENT AND
v.) PERMANENT INJUNCTION
SEARS, ROEBUCK, AND CO., a) PURSUANT TO STIPULATION
New York Corporation, and KMART)
CORPORATION, a Michigan Corporation.)
Defendants.)

Plaintiff, the People of the State of California,
appearing by and through its attorneys, Edward S. Berberian,
District Attorney for the County of Marin, by Robert E. Nichols,
Deputy District Attorney; Nancy E. O'Malley, District Attorney for
the County of Alameda, by Scott D. Patton, Deputy District
Attorney; Steve Cooley, District Attorney for the County of Los
Angeles, by Stuart C. Lytton, Deputy District Attorney; Dolores
Carr, District Attorney for the County of Santa Clara, by Matthew
S. Harris, Deputy District Attorney; Bob Lee, District Attorney for
the County of Santa Cruz, by William Atkinson, Assistant District
Attorney; Stephan R. Passalacqua, District Attorney for the County
of Sonoma, by Matthew T. Cheever, Deputy District Attorney; and,

1 defendants Sears, Roebuck, and Co., a New York Corporation, and
2 Kmart Corporation, a Michigan Corporation (collectively
3 "Defendants") appearing through their attorney, Scott D. Feinstein,
4 Esquire, Sears Holdings Management Corporation Associate General
5 Counsel; and,

6 Plaintiff and Defendants having stipulated to the entry
7 of this Final Judgment and Permanent Injunction prior to the taking
8 of any proof and without trial or adjudication of any issue of fact
9 or law; and the Court having considered the pleadings;

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

11 JURISDICTION

12 1. This action is brought pursuant to California law
13 and this Court has jurisdiction of the subject matter hereof and
14 the parties hereunto.

15 APPLICABILITY

16 2. The provisions of the Final Judgment are applicable
17 to Defendants Sears, Roebuck, and Co., and Kmart Corporation, and
18 to their officers, directors, representatives, successors, assigns,
19 and to any and all persons, partnerships, corporations, or other
20 entities acting under, by, through, on behalf of, or in concert
21 with Defendants, with actual or constructive notice of this Final
22 Judgment, in connection with the operation of Sears, Roebuck, and
23 Co. stores, and Kmart Corporation stores (collectively, "enjoined
24 persons"). All obligations imposed upon Defendants by the terms of
25 this Final Judgment are ordered pursuant to Business and
26 Professions Code Sections 17203 and 17535.

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DEFINITIONS

3. For purposes of this Final Judgment, the following definitions shall apply:

a. **"Store"** means a retail store located in California that bears the Sears or Kmart name and is operated by an affiliate of Sears Holdings Management Corporation.

b. **"Corporate Price Accuracy Compliance Lead"** shall mean the individuals appointed to oversee price accuracy for the stores. One individual may be appointed to oversee price accuracy for both Sears and Kmart stores. Alternatively, one individual may be appointed to oversee price accuracy for Sears stores and another individual may be appointed to oversee price accuracy for Kmart stores.

c. **"Department Price Accuracy Compliance Lead"** shall mean the assistant store manager (or other appointed employee) within each department of each store.

d. **"Advertised Price"** shall mean the price that is posted or displayed on the item itself or on a shelf tag that corresponds to the item or the price for an item published in a newspaper, magazine, or direct mail publication. Nothing herein will be construed to mean that a consumer will be eligible for an advertised price if he or she fails to qualify under the particular terms disclosed in conjunction with the advertised price so long as said terms are clearly and conspicuously disclosed.

e. **"POS Price"** shall mean the price of an item when it is electronically scanned at the Point-of-Sale terminal to determine the identity of the item and the price to be charged for the item.

1 f. **"Pricing Discrepancy"** shall mean a variance
2 between the advertised price and the POS price, but shall not
3 include (1) situations where the variances between the advertised
4 price and the POS price is consistent with a clear and conspicuous
5 price correction notice; (2) any variance between an advertised
6 price and the POS price when the merchandise has been correctly
7 stocked but inadvertently moved, transferred, or transported to the
8 wrong rack, shelf, display, or fixture by a customer; or (3) any
9 variance which results in a customer being charged a price lower
10 than the advertised price.

11 g. **"Report of Pricing Discrepancy"** shall mean a report
12 of a pricing discrepancy by any consumer, any employee, or any
13 agent of a governmental agency, or any employee of a store.

14 h. **"Corporate CRV Compliance Lead"** shall mean the
15 individual appointed to oversee California Redemption Value ("CRV")
16 accuracy for Kmart stores.

17 i. **"CRV Error"** shall mean a variance between the CRV
18 value that should be assessed on an item pursuant to California CRV
19 Regulations and the CRV value assessed on that item by Kmart's
20 point-of-sale terminal system.

21 j. **"Report of CRV Error"** shall mean a report of a CRV
22 error by any consumer, any employee, or any agent of a government
23 agency, or any employee of a Kmart store.

24 k. **"Pricing Accuracy Compliance Personnel"** shall mean
25 all corporation price accuracy compliance leads, all store
26 managers, and all department price accuracy compliance leads.

27 l. **"Weights and Measures Official"** shall mean (i) any
28 representative of the State of California Division of Measurement

1 Standards, (ii) any California County Sealer, (iii) any Director of
2 a California County Department of Agriculture, (iv) the California
3 Attorney General, or (v) any California District or City Attorney.

4 INJUNCTION

5 4. Pursuant to Business and Professions Code Sections
6 17203 and 17535, enjoined persons, and each of them, are
7 permanently enjoined and restrained from directly or indirectly
8 engaging in any of the following acts or practices:

9 a. Charging at the time of sale of a commodity, a
10 value which is more than the price which is advertised, posted,
11 marked, displayed, or quoted, in violation of Business and
12 Professions Code Section 12024.2. Nothing herein will preclude
13 Sears from requiring that the customer present the applicable
14 advertisement or coupon at the point-of-sale as a condition of
15 obtaining the advertised price. However, any presentment
16 requirement must be clearly and conspicuously disclosed in the
17 advertisement and/or coupon; and

18 b. Making or causing to be made any false or
19 misleading statement to the public with respect to the price of
20 items offered for sale.

21 COMPLIANCE PROGRAM

22 5. Pursuant to Business and Professions Code Section
23 17203 and 17535, Defendants are hereby enjoined and restrained for
24 a period of three years from the date of the entry of this Final
25 Judgment from directly or indirectly using any type of scanning
26 systems at an existing or future California Sears or Kmart store
27 unless Defendants maintain in every existing Sears and Kmart store
28 in California and in every new Sears or Kmart store to be opened in

1 California during the three-year period, a program to enhance
2 pricing accuracy and correct pricing errors. This program shall
3 include:

4 a. **Policies and Procedures:** Defendants shall
5 implement written price accuracy policies and procedures which
6 shall be reasonably accessible to all store personnel via an online
7 format such as an Internet site and/or in an offline format, such
8 as a binder.

9 b. **Appointment of Pricing Personnel:**

10 i. **Corporate Price Accuracy Compliance Lead:**
11 Defendants shall appoint a Corporate Price Accuracy Lead, who shall
12 be responsible for overseeing with respect to the stores, (1) the
13 maintenance of accurate prices and point-of-sale systems,
14 (2) implementation of price changes, and (3) prompt reporting,
15 research, and resolution of price discrepancies. The Corporate
16 Price Accuracy Compliance Lead may designate duties to other
17 employees, appoint backups, or retain third-party providers as he
18 or she deems reasonable and appropriate to accomplish his or her
19 duties;

20 ii. **Department Price Accuracy Compliance Lead:**
21 Defendants shall appoint a Department Price Accuracy Compliance
22 Lead, who shall oversee price accuracy in the department of the
23 store where he or she is employed, including correction of signage
24 errors. The Department Price Accuracy Compliance Lead may delegate
25 duties to other employees or appoint backups as he or she deems
26 reasonable and appropriate to accomplish his or her duties;

27 c. **In-Store Audits By Store Personnel:**

28 i. Random price check audits shall be

1 conducted by store employees no less than once per calendar week.
2 Each audit shall include no less than 50 items across different
3 product categories;

4 ii. If any pricing discrepancy is revealed,
5 store employees shall take necessary steps promptly to correct the
6 pricing discrepancy. At the completion of each audit, store
7 employees shall inform the relevant Department Price Accuracy
8 Compliance Lead of any pricing discrepancy identified during the
9 audit;

10 iii. The Department Price Accuracy Lead shall
11 confirm that any pricing discrepancies identified during a weekly
12 audit have been addressed in the store, and shall advise the store
13 manager of any pricing discrepancy. The store manager shall review
14 such referrals by Department Price Accuracy Compliance Leads and
15 shall advise the Corporate Price Accuracy Compliance Lead via
16 electronic mail or other traceable communications mechanism when a
17 pricing discrepancy appears to have been caused by an error which
18 extends beyond a single store;

19 iv. Store employees shall record the results
20 of each weekly audit electronically or otherwise. Such records
21 shall include (1) the date of the audit, (2) the name of the person
22 who completed the audit, (3) the number of items audited, and (4) a
23 list of pricing discrepancies identified, if any.

24 **d. In-Store Audits by Third Parties:**

25 i. Each store shall be subject to a random
26 price check audit conducted by an independent, third-party auditor
27 no less than once per calendar year. Each audit shall include no
28 less than 100 (one hundred) items across different product

1 categories.

2 ii. If any pricing discrepancy is revealed,
3 store employees shall take necessary steps promptly to correct the
4 pricing discrepancy and to inform the relevant Department Price
5 Accuracy Compliance Lead.

6 iii. The Department Price Accuracy Compliance
7 Lead shall confirm that any pricing discrepancies identified during
8 a third-party audit have been addressed in the store and shall
9 advise the store manager when such a pricing discrepancy appears to
10 have been caused by an error which extends beyond a single store.
11 The store manager shall review such referrals by Department Price
12 Accuracy Compliance Leads and shall advise the Corporate Price
13 Accuracy Compliance Lead via electronic mail or other traceable
14 communication mechanism when a pricing discrepancy appears to have
15 been caused by an error which extends beyond a single store.

16 iv. Defendants shall require the third-party
17 auditor to records the results of each audit electronically or
18 otherwise. Such records shall include (1) the date and
19 approximately time of the audit; (2) the name of the person who
20 completed the audit, (3) the number of items audited, and (4) a
21 list of pricing discrepancies identified, if any.

22 e. **In-Store Reports of Pricing Discrepancies:**

23 Whenever a store employee receives a report of pricing discrepancy
24 the employee shall promptly investigate whether there's an error or
25 request the relevant Department Price Accuracy Compliance Lead to
26 investigate the error. If the employee investigates and determines
27 that a pricing discrepancy exists, the employee shall notify the
28 relevant Department Price Accuracy Compliance Lead. The Department

1 Price Accuracy Compliance Lead shall take appropriate action to
2 resolve the price discrepancy as soon as reasonably possible,
3 including, if necessary, by notifying the store manager or the
4 Corporate Price Accuracy Compliance Lead.

5 **f. Reports of Pricing Discrepancies to the**
6 **Corporate Price Accuracy Compliance Lead:** When the Corporate Price
7 Accuracy Compliance Lead receives a report of pricing discrepancy
8 asserting that an error may extend beyond a single store, he or she
9 shall promptly investigate whether a system error at the corporate
10 level occurred. If a system error at the corporate level is
11 identified, the Corporate Price Accuracy Compliance Lead shall
12 ensure that the appropriate action to correct the system error
13 begins promptly after such verification. The Corporate Price
14 Accuracy Compliance Lead shall also endeavor in good faith to
15 prompt interim action as necessary pending the resolution of a
16 pricing discrepancy or system error.

17 **g. Training:** Each store employee shall
18 participate in pricing integrity training as appropriate for his or
19 her position. Such training may include elements such as a step-
20 by-step reference guide for conducting price integrity checks with
21 a handheld unit for store sales employees and a detailed price
22 integrity training session for store managerial employees. Price
23 accuracy compliance personnel shall participate in additional
24 training sessions as appropriate. The training sessions will
25 cover topics to improve price accuracy, such as (1) price accuracy
26 awareness; (2) instructions on how to perform price accuracy best
27 practices and ensure that they are executed consistently; and
28 (3) instructions on how to address price accuracy issues with

1 customers.

2 h. **CRV Process:** Defendants shall implement in all
3 Kmart stores a process to upload CRV amounts to its point-of-sale
4 terminal system at the corporate level (rather than the store
5 level).

6 i. **In-Store Reports of CRV Discrepancies:**
7 Whenever a Kmart store employee receives a report of a CRV error,
8 the employee shall promptly investigate whether there is an error
9 or request the relevant assistant store manager to investigate the
10 error. If the Kmart store employee investigates and determines
11 that a CRV error exists, the employee shall notify the store
12 manager or relevant assistant store manager. The store manager or
13 assistant store manager shall take appropriate action to resolve
14 the CRV error as soon as reasonably possible, including, if
15 necessary, by notifying the Corporate CRV Compliance Lead.

16 j. **Reports of CRV Errors to Corporate CRV**
17 **Compliance Lead:** When the Corporate CRV Compliance Lead receives a
18 report of a CRV error asserting that an error may extend beyond a
19 single store, he or she shall promptly investigate whether a system
20 error at the corporate level occurred. If a system error at the
21 corporate level is verified, the Corporate CRV Compliance Lead
22 shall ensure that appropriate action to correct the system error
23 begins promptly after such verification. The Corporate CRV
24 Compliance Lead shall also endeavor in good faith to make prompt
25 interim action, as necessary, pending the resolution of a CRV error
26 or a system error.

27 k. **Retention of Records:** Defendants shall
28 establish a procedure to retain third-party audit records for at

1 least three years and in-store records for at least one year from
2 the date of creation. Such records may be retained electronically
3 rather than in paper copies and shall be made available for
4 inspection within 30 (thirty) days from the date of request of any
5 Weights and Measures official.

6 MONETARY RELIEF

7 6. Defendants shall pay to Plaintiff upon the
8 signing of the Stipulation for Entry of Final Judgment, as and for
9 costs, in the sum of One Hundred Thousand, Five Hundred-Twenty
10 Dollars and Sixteen Cents (\$100,520.16) by certified check made
11 payable to the Marin County District Attorney and delivered to
12 Robert E. Nichols, Deputy District Attorney, Marin County District
13 Attorney's Office, 3501 Civic Center Drive, Room 130, San Rafael,
14 California 94903-5207. Said costs shall be distributed as follows:

<u>AGENCY</u>	<u>TOTAL COST RECOVERY</u>
Dept. Measurement Standards	\$9,606.00
Alameda County Sealer	\$5,236.00
Fresno County Sealer	\$565.51
Lake County Sealer	\$65.44
Los Angeles County Sealer	\$26,803.30
Marin County Sealer	\$2,206.20
Merced County Sealer	\$1,430.00
Monterey County Sealer	\$597.96
Nevada County Sealer	\$259.32
Riverside County Sealer	\$11,303.42
San Benito County Sealer	\$1,814.07
San Bernardino County Sealer	\$5,796.00
San Diego County Sealer	\$9,456.33
San Luis Obispo County Sealer	\$3,795.00
Santa Barbara County Sealer	\$884.00
Santa Clara County Sealer	\$7,190.72
Santa Cruz County Sealer	\$4,888.00
Shasta County Sealer	\$1,094.33
Sonoma County Sealer	\$4,074.00
Stanislaus County Sealer	\$1,651.59
Sutter County Sealer	\$437.97
Tulare County Sealer	\$230.00
Ventura County Sealer	\$1,135.00
TOTAL	\$100,520.16

1 7. As provided by and pursuant to Business and
2 Professions Code Sections 17206 and 17536, Defendants shall pay to
3 Plaintiff upon the signing of the Stipulation for Entry of Final
4 Judgment, as civil penalties, the sum of Nine Hundred Thousand
5 Dollars (\$900,000.00) by certified check made payable to the Marin
6 County District Attorney and delivered to Robert E. Nichols, Deputy
7 District Attorney, Marin County District Attorney's Office,
8 3501 Civic Center Drive, Room 130, San Rafael, California 94903-
9 5207. Pursuant to Government Code Section 26506, said civil
10 penalties shall be divided equally and paid to the prosecuting
11 agencies bringing this action.

12 8. The parties having stipulated and the Court hereby
13 finds that it is impractical and impossible to identify or to
14 provide direct restitution to consumers who may have unknowingly
15 been charged an incorrect price for merchandise and that other
16 forms of direct restitution are too impractical, costly, and would
17 far exceed any benefit to individual consumers. Thus, Defendants
18 shall pay restitution under the doctrine of cy pres pursuant to
19 Business and Professions Code Sections 17203 and 17535 as follows:

20 a. The sum of \$100,000 (one hundred thousand
21 dollars) in the form of 100 individual Sears/Kmart gift cards for
22 \$1,000 (one thousand dollars) each. Said gift cards shall be
23 delivered to Robert E. Nichols Deputy District Attorney, Marin
24 County District Attorney's Office, 3501 Civic Center Drive,
25 Room 130, San Rafael, California 94903-5207, for distribution to
26 state and local agencies charged with the enforcement of pricing
27 accuracy, including County Departments of Weights and Measures and
28 California Department of Measurement Standards offices throughout

1 the State of California.

2 9. Defendants shall bear their own attorneys fees and
3 costs.

4 RETENTION OF JURISDICTION AND FINALITY

5 10. The Court retains jurisdiction for the purpose of
6 enabling any party to this Final Judgment to apply to the Court at
7 any time for such further orders and directions as may be necessary
8 and appropriate for the construction or carrying out of this Final
9 Judgment; for the modification or termination of any of its
10 injunctive terms; and for the enforcement of, compliance with, and
11 punishment of violations of the Final Judgment.

12 11. This Stipulated Final Judgment represents the
13 complete and final settlement of all matters set for in the
14 Complaint filed contemporaneously with the Stipulated Final
15 Judgment.

16 EFFECTIVENESS

17 12. This Final Judgment shall take effect immediately
18 upon filing and without the filing of Notice of Entry of Final
19 Judgment.

20 Dated: JUL 19 2010, 2010.

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VERNA ADAMS

JUDGE OF THE MARIN COUNTY
SUPERIOR COURT,
STATE OF CALIFORNIA